

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois)	
Petitioner)	
)	Docket 16-0262
Rate MAP-P Modernization Action Plan –)	
Pricing Annual Update Filing)	

**AMEREN ILLINOIS COMPANY’S
MOTION FOR LEAVE TO FILE SURREPLY BRIEF *INSTANTER***

The Illinois Industrial Energy Consumers and Citizens Utility Board’s (IIEC/CUB) joint reply brief contains arguments and assertions that are improper. It contains statements that are blatantly contrary to the record evidence. It makes unsubstantiated allegations of bad faith by AIC, as well as new arguments that were not offered at any point during this proceeding. And it improperly attempts to bring a new discovery dispute before the Commission despite IIEC/CUB’s failure to follow the Commission’s discovery procedures.

Ameren Illinois Company (AIC) should be afforded an opportunity to respond.

Therefore, pursuant to Commission Rules 200.190(a) and 200.800(a), 83 Ill. Admin. §§ 200.190(a), 200.800(a), AIC requests leave to file the accompanying Surreply Brief *instanter*, or in the alternative, that the Commission strike from the record of proceeding the offending portions of IIEC/CUB’s reply brief. Attachment 1 to this motion highlights the improper portions of IIEC/CUB’s reply brief.

AIC recognizes that being allowed to file a surreply brief is an extraordinary remedy. However, these aspects of IIEC/CUB’s reply brief are egregious and require a surreply:

1. Section 200.800 of the Commission’s rules requires briefs to contain statements of fact supported by citations to the record. 83 Ill. Admin. Code § 200.800(a). IIEC/CUB’s reply brief egregiously misstates record facts. For example, IIEC/CUB’s reply brief repeatedly states

AIC did not provide information regarding the services it received from AMS in 2014 and 2015. (See, e.g., IIEC/CUB Reply Br. at 11 (stating AIC refused “to provide a list of the specific services it actually procured from AMS”); see also *id.* at 2, 3, 4, 5, 6, 7, 8, 9, 10, 12.) But AIC provided lists of every service it received from AMS in 2014 and 2015, as well as the cost of each service. (IIEC/CUB Cross Ex. 1 (CP))¹ at 3-6; IIEC/CUB Cross Ex. 3² (CP) at 7-12; Ameren Ex. 15.1 at 2.)

2. IIEC/CUB’s reply brief also claims “the word ‘each’ . . . does not appear in Mr. Gorman’s testimony” in relation to AMS services and costs, and that AIC’s use of the word in brief “appears designed to create an innuendo that . . . IIEC/CUB believe that AIC must prove the reasonableness of every transaction involving the provision of any service.” (IIEC/CUB Reply Br. at 13-14.) But Mr. Gorman’s rebuttal testimony uses the word “each” repeatedly—notably, Mr. Gorman testified it was necessary for AIC to show “the variance in the cost for *each* of the AMS services in 2015 versus 2014.” (IIEC/CUB Ex. 2.0 at 11:231-32 (emphasis added)).

3. The Commission will not entertain proposals offered for the first time in brief, after the evidence has closed and the time for responsive evidence has expired. See, e.g., *Ill. Comm. Comm’n*, Docket 94-0066, Order, 1995 Ill. PUC LEXIS 176, *266-68 (Feb. 23, 1995) (disregarding proposal offered for the first time in brief, to which no party had the opportunity to respond); see also 83 Ill. Admin. Code § 200.800(c) (prohibiting parties from raising arguments in a reply brief that are not responsive to those raised in another party’s opening brief). IIEC/CUB’s reply brief contains new arguments that neither IIEC/CUB nor its witness Mr.

¹ IIEC/CUB Cross Exhibits 1 (CP) and 3 (CP) include representative screen shots of the over 46,000 and 25,500 rows of AMS cost data that AIC provided in response to data requests IIEC-CUB 2.04 and MHE 3.03, respectively. (Tr. at 36-37; see also Ameren Ex. 15.0 (Rev.) (CP) at 6, 7, 15, 17 (explaining the extensive AMS cost data provided in native Excel format with AIC’s responses to data requests IIEC-CUB 2.04 and MHE 3.03).)

² See *supra* note 1.

Gorman raised during this proceeding. For example, IIEC/CUB argues that AIC's requested recovery of certain service company expenses "is not consistent with the approved [General Services Agreement]." (IIEC/CUB Reply Br. at 10.) At no point during this proceeding has IIEC/CUB or any other party argued that AIC is not in compliance with the GSA. Instead, their argument was that compliance with the GSA, alone, does not mean that AMS costs are prudent and reasonable. (*Id.* at 9-11; IIEC/CUB Ex. 2.0 at 3-5.) Because IIEC/CUB waited until its reply brief to raise this argument, AIC was denied an opportunity to fully respond.

4. Section 200.190 permits the ALJ to exclude "irrelevant, immaterial, scurrilous or unethical matter." 83 Ill. Admin. Code § 200.190(a). IIEC/CUB's reply brief contains statements that, without basis, accuse AIC of hiding information from the Commission. For example, IIEC/CUB's reply brief speculates that "the real reason behind the total increase in AMS costs is not that AIC truly required services that cost more in 2015 than they did in 2014." (IIEC/CUB Reply Br. at 6; *see also id.* at 4 ("AIC did whatever it could to prevent the identification of specific services and costs that may be unreasonable.")) Such unfounded allegations are not appropriate in Commission proceedings and cannot go un-addressed.

5. The Commission's rules and the ALJ's Case Management Order in this case provide a process to resolve discovery disputes. The rules and the Case Management Order require consultation among parties and "reasonable attempts to resolve differences" regarding discovery. *See* 83 Ill. Admin. Code §§ 200.350, 200.370; Case Mgmt. Plan at II.A (filed May 6, 2016); Tr. at 6-9 (entering Case Mgmt. Plan). IIEC/CUB's reply brief repeatedly accuses AIC of "failing" or "refusing" to provide information in discovery. (*See, e.g.*, IIEC/CUB Reply Br. at 5.) But IIEC/CUB has not followed the dispute resolution procedures outlined in the rules or the Case Management Order, and instead has raised new discovery complaints in its reply brief.

6. These egregious misstatements, new arguments, and unfounded accusations require a response from AIC in order to ensure a fair and clear record of proceeding. AIC should be afforded an opportunity for surreply. AIC's Surreply Brief is attached for filing, *instanter*. Further, AIC's surreply position should be included in the statement of AIC's position on AMS charges in the ALJ's proposed order and the Commission's final order. Proposed order language is provided with the accompanying Surreply Brief.

7. Alternatively, the offending statements and the others in IIEC/CUB's reply brief, highlighted in Attachment 1 to this motion, should be removed from the record.

8. In similar circumstances, parties have been permitted to file surreply briefs. *See, e.g., Ill. Bell Tele. Co.*, Docket 05-0171, Notice of ALJ Ruling (Sept. 21, 2005) (granting a motion for leave to file a surreply brief where a party included new arguments in its reply brief and, because the reply briefs were filed simultaneously, the movant had no opportunity to respond to the new arguments); *Ill. Power Co.*, Docket 06-0179, Notice of ALJ Ruling (Feb. 6, 2007) (granting leave to file surreply briefs where movant alleged the petitioner had not revealed its legal theory until its reply brief); *see also Commonwealth Edison Co.*, Docket 13-0567, Notice of ALJ Ruling (Aug. 28, 2014) (striking new, non-responsive material from intervenor's reply brief in response to a motion to strike, or in the alternative, file a surreply brief).

WHEREFORE, AIC respectfully requests leave to file the accompanying surreply brief, *instanter*, or in the alternative, requests that the portions of the IIEC/CUB reply brief highlighted in Attachment 1 to this motion be stricken from the record.

Dated: October 19, 2016

Respectfully submitted,

/s/ Albert D. Sturtevant

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